IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.Nos.348 and 410 of 2001

M/s Haryana State Cooperative
Supply and Marketing Federation Ltd.,
Coimbatore by its
Power Holder Devender Kumarlal .. Appellant/Complainant in both appeals

vs.

1. M/s Jayam Textiles
   Proprietory concern by its
   Proprietor Pritam Satheja
   18/7, Ginning Factory Road,
   Singanallur
   Coimbatore.

2. Pritam Satheja
   Proprietor
   M/s Jayam Textiles
   18/7, Ginning Factory Road,
   Singanallur
   Coimbatore .. Respondents in Crl.A.No.348 of 2001 / Accused

M/s Jayam Textiles
Proprietory concern by its
Proprietor Pritam Satheja
18/7, Ginning Factory Road,
Singanallur
Coimbatore. .. Respondent in Crl.A.No.410 of 2001 /Accused

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These appeals have been preferred against the order dated 07.02.2001, in C.C.No.1377 of 1995 and 1375 of 1995 respectively on the file of the learned Judicial Magistrate, V,Coimbatore.

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For Appellant : Mr.N.I.Ishtiaq Ahmed
(in both appeals)

For Respondent : Mr.A.S.Baalaji
in Crl.A.No.410/2001

For respondents
in Crl.A.No.348/2001 : Notice unserved.

C O M M O N J U D G M E N T

Crl.A.No.348 of 2001 has been preferred by the complainant, a power of attorney holder Mr.Devender Kumarlal against the judgment in C.C.No.1377 of 1995 on the file of the Judicial Magistrate No.V,Comibatore.

Crl.A.No.410 of 2001 has been filed by the Power of Attorney holder by name Devender Kumarlal against the Judgment in C.C.No.1375 of 1995 on the file of Judicial Magistrate NO.V,Coimbatore.

2. The short facts of the complaint in both C.C.Nos.1377 of 1995 and 1375 of 1995 are that the complainant viz., M/s Haryana State Cooperative Supply and Marketing Federation Ltd., indulged in supply of cotton bales and that accused had purchased cotton bales from the complainant to a value of Rs.30.45,602/- and to discharge the same, issued two cheques on 16.1.1995 for Rs.5,00,000/- and another cheque dated 20.1.1995 for Rs.5,00,000/-. When those two cheques were presented to the bank, the same were returned with an endorsement "for want of sufficient funds" on 17.4.1995. A lawyer's notice was sent by the complainant on 19.4.1995 giving 15 days time to the accused to repay the cheque amount. The accused has received the notice, but not chosen to repay the same.

2a. In C.C.No.1375 of 1995, the complainant is M/s Haryana State Cooperative Supply and Marketing Federation Ltd., indulged in sale of cotton bales. The accused had purchased cotton bales to the value of Rs. 30,45,602/- and issued two cheques. One cheque dated 20.1.1995 for Rs.11,00,000/- and another cheque dated 25.1.1995 for another Rs.11,00,000/- for the discharge of the said amount. When those two cheques were presented by the complainant in Punjab National Bank, Coimbatore branch, the same were returned with an endorsement " for want of sufficient funds" on 17.4.1995. A notice was sent to the accused on 27.4.1995 giving 15 days to the accused to pay the cheque amount. In spite of reply notice, the accused neither chosen to send any reply nor paid the cheque amount.

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3. After taking cognizance of the complaints which were filed under Section 200 of Cr.P.C., the learned Judicial Magistrate issued summons to the accused for appearance. On appearance of the accused, copies under Section 207 of Cr.P.C. were furnished to the accused and when the offence was explained to the accused, he pleaded not guilty.

4. On the side of the complainant,P.Ws1 to 3 were examined and Exs P1 to P13 were marked in both the cases.

4a. P.W.1 is the power of attorney holder in both the cases, who has narrated what he had stated in the respective complaints. P.W.2 is the Manager of Punjab National Bank, Coimbatore wherein the complainant is having his account. P.W.3 is the Manager of Canara Bank, Coimbatore wherein the accused is having his account.

4b. Exs P5,P6, impugned cheques (in both the cases) were presented for encashment to the Canara Bank, Coimbatore branch through Punjab National Bank, Coimbatore, all the four cheques were returned with an endorsement that the accused has no sufficient funds. After issuing statutory notice under Section 138 (a) of the Negotiable Instruments Act 1881, under the original of ExP8, (both the cases), the complainant had preferred the complaint, since the accused had failed to send neither reply nor chosen to pay the cheque amount.

5. When the incriminating circumstances were put to the accused, he denied his complicity with the crime(in both the cases).

6. The learned Judicial Magistrate NO.V,Coimbatore, on the basis of the oral and documentary evidence let in before him, has come to a conclusion that the complaint preferred by the complainant is not maintainable and accordingly dismissed both the cases. Against the findings of the learned trial Judge, these appeals have been preferred by the complainant.

7. The only point to be decided in these appeals is whether the complainant viz., Devender Kumarlal is competent to file these appeals against the accused?

8.Heard Mr.N.Ishtiaq Ahmed, learned counsel appearing for the appellant in both appeals and Mr.A.S.Baalaji, learned counsel appearing for respondent in Crl.A.No.410 of 2001 and considered their respective submissions.

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9.The point:-

Admittedly, the complainant is M/s Haryana State Cooperative Supply and Marketing Federation Ltd.. P.W.1 is the power of Attorney Holder for the complainant would admit that the Managing Director of the complainant is Naresh Gulati. He would rely on Ex P11 and contend that the Managing Director, Naresh Gulati has authorised him to file these complaints on behalf of M/s Haryana State Cooperative Supply and Marketing Federation Ltd.,. Ex P11 is the General Power of Attorney executed by the Managing Director Naresh Gulati in favour of Devender Kumarlal, the complainant herein.

10. The learned counsel appearing for the respondent would contend that as per Bye-laws Ex.D.1 Rule 27(xviii) of the complainant, the Managing Director is competent to "sue and be sued in the name and on behalf of the Federation" and not the complainant Devender Kumarlal and it is in no where stated in the bye-laws, the Managing Director himself can relegate his power conferred under Rule 27 (xviii) to anyone else, unless the Board of Directors by way of resolution authorised the Managing Director to relegate to some one his power conferred under Rule 27(xviii) of the Bye-laws. A combined reading of Rules 24, 25 and 26 of the Bye-laws, Ex D1 will go to show that the Managing Director is one of the members of the Executive Committee and under Rule 25 (xiv) the Executive Committee is empowered to perform any other duties or exercise any other powers which may be assigned to it by the Board of Directors.

11. So, I am of the view that unless the Board of Directors authorised the Managing Director to execute the power of Attorney in favour of other person, the Managing Director cannot execute any power of Attorney relegating his power conferred under Rule 27 of the Bye-laws Ex D1 to any other person.

12. The learned trial Judge has also taken the same view and dismissed the complaint on the ground that the complaint preferred by Devender Kumarlal, claiming that he is the power of attorney holder under Ex P11 from the Managing Director cannot maintain the complaint under Section 200 of Cr.P.C.

13. Under such circumstances, I do not find any reason to interfere with the well considered order of the learned Judicial Magistrate No.V,Coimbatore in C.C.Nos.1377/1995 and 1375/1995 respectively. The point is answered accordingly.

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14. In fine, Crl.A.Nos.348 and 410 of 2001 are dismissed confirming the Judgment in C.C.Nos.1377/1995 and 1375/1995 respectively on the file of Judicial Magistrate No.V, Coimbatore.

sg

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1. The Judicial Magistrate,No.V, Coimbaotre

2.-do- through the Chief Judicial Magistrate, Coimbatore.

3. The Section Officer,
V.R.Section, High Court, Madras-104.

+2 ccs to Mr.N.Ishtiaq Ahmed, Advocate Sr.Nos.33507 & 33408.

+1 cc to Mr.A.S.Balaji, Advocate Sr.No.35596.

RS(CO)
dcp/28.06.07

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